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In The

Supreme Court Of The United States

October Term, 1998

LIDA NOSIK,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

**PETITION FOR WRIT OF CERTIORARI
WITH ATTACHED APPENDIX**

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Connecticut Supreme Court's decision denying validity to a duly solemnized religious marital ceremony in the Serbian Orthodox Church violate petitioner's rights under the First Amendment's Free Exercise and Establishment Clauses when the Connecticut Supreme Court substituted its own secular judgment for the uncontradicted and undisputed testimony of a duly ordained priest of that church and two independent witnesses who testified that the priest actually performed a religious marital ceremony in which the petitioner and her spouse were married?

2. Where petitioner's marital status was the sole issue in a larceny prosecution in which she was charged and convicted of Larceny in the Second Degree for representing in an application for group medical insurance benefits that she was in fact married, did the Connecticut Supreme Court's decision denying validity to a duly solemnized religious marital ceremony in the Serbian Orthodox Church violate petitioner's rights under the Due Process Clause of the Fourteenth Amendment and the First Amendment's Free Exercise and Establishment Clauses when Connecticut had previously acknowledged the validity of a religious marital ceremony by a Roman Catholic clergyman in the absence of a civil marriage license since 1980 in **Carabetta vs. Carabetta**, 182 Conn. 344, 438 A.2d 109 (1980)?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

LIDA NOSIK,

Petitioner

VS.

STATE OF CONNECTICUT,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

The Petitioner, Lida Nosik, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Connecticut Supreme Court in this case.

I. OPINIONS BELOW

The defendant Lida Nosik was convicted after a bench trial in the Superior Court, Judicial District of Danbury at Danbury before Judge Morton I Riefberg on one count of Larceny in the Second Degree in violation of Conn.

Gen. Stat. 53a-123. Ms. Nosik was acquitted by the Court of the charge of insurance fraud in violation of Conn. Gen. Stat. 53a-215. The verdict was rendered by Judge Riefberg on May 1, 1995, and on June 27, 1995 the Petitioner Lida Nosik was sentenced to a two year suspended sentence with probation for a period of five years with a special condition that restitution in the amount of $10,692.94 be made to the medical insurance carrier who had paid that sum to physicians who had provided treatment to the man Ms. Nosik represented to be her husband, Michael Kovac. The petitioner is at liberty.

On February 18, 1997, Connecticut's Appellate Court affirmed Lida Nosik's conviction, 44 Conn. App. 294 (1997) and on April 3, 1997 the Connecticut Supreme Court granted certification to review the following issue:

> Whether the Appellate Court properly held that (1) the evidence of the defendant's alleged marriage in New Jersey did not establish a valid marriage under Connecticut law; and (2) as such, the evidence presented at the defendant's trial was sufficient to convict the defendant?

State vs. Nosik, 240 Conn. 922 (1997).

On June 30, 1998 the Connecticut Supreme Court affirmed Lida Nosik's conviction; **State vs. Nosik**, 245 Conn.

196 (June 30, 1998). On July 29, 1998 the Connecticut Supreme Court denied a timely motion for reargument en banc and for reconsideration (App. A-14).

II. JURISDICTIONAL STATEMENT

The petitioner seeks review of the Connecticut Supreme Court's ruling affirming her conviction. This Court has jurisdiction to review the judgment by writ of certiorari pursuant to 28 U.S.C. 1257(a). Pursuant to Rule 13.1 this petition has been filed within 90 days of the denial of petitioner's timely motion for reargument en banc and for reconsideration. (App. A-14).

III. CONSTITUTIONAL PROVISIONS WHICH THE CASE INVOLVES

The petitioner relies upon the First and Fourteenth Amendments to the United States Constitution. The First Amendment provides in relevant part..."Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;... The Fourteenth Amendment provides in relevant part..."No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV. STATEMENT OF THE CASE AND FACTS MATERIAL TO THE CONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI

As stated by the Connecticut Supreme Court, **State vs. Nosik**, 245 Conn. 196 (1998), the principal issue in Lida Nosik's trial was whether she had the intent necessary for a conviction of Larceny in the Second Degree in violation of Connecticut General Statutes, 53a-123. Justice Peters stated in her opinion for the court, "[t]he answer to this question turns on whether the defendant lacked a good faith belief that she was legally married to Michael Kovac... whom she listed as a dependent spouse in her application for her employee health insurance policy." Id. 245 Conn. at 198.

As found by the Connecticut Supreme Court, Father Gvodzm Petrovic testified that he was an ordained priest and that he had performed the marriage between Lida Nosik and Michael Kovac at St. George's Serbian Orthodox Church in Elizabeth, New Jersey on December 31, 1988. Id, 245 Conn. at 204. (App. A-8). There were two independent witnesses; Zoran Javanovic, a parishioner at St. George's Church and Milka Petrovic also a member of the church who acted as witnesses (App. A-8). Through Father Petar Petrovic, the pastor of St. George's Church, the petitioner introduced a record of the ceremony in the church marriage registry (App. A-8). There was no

marriage license issued by the State of New Jersey (App. A-8).

Lida Nosik was employed as a teacher with the Danbury Board of Education. In May 1991 the Board of Education changed medical insurance carriers from Blue Cross/Blue Shield to CIGNA which was effective July 1, 1991. Her dependents were listed on the application as Michael Kovac and Michael Duvrow Kovac (App. A-19-20). Michael Kovac was listed as the petitioner's husband (App. A-19). Michael Duvrow Kovac is the son of Lida Nosik and Michael Kovac (App. A-20). There was no dispute that Michael Duvrow Kovac, born on January 8, 1988 was the son of petitioner Lida Nosik and Michael Kovac (App. A-20). It was stipulated at trial that the petitioner paid no less money than any other member of the Danbury Board of Education who had a family plan. (App. A-21). The larceny charge arises out of the payments made by CIGNA to medical providers who treated Michael Kovac.

Petitioner testified at trial that she had been a school psychologist since 1985 (App. A-21). She holds a Sixth Year Certificate from Fairfield University and is a United States citizen having been born in Venezuela (App. A-21-22). Petitioner met Michael Kovac when she was 18 years old, some twenty years before the trial, and in the mid-seventies started cohabiting with him (App. A-23). Although they had separated at times because of personal problems, petitioner testified that

they were married on July 21, 1987 in Yugoslavia in a civil ceremony because she became pregnant with their son (App. A-24); she was 39 years old when she married Michael Kovac. (App. A-25).

While there was conflicting evidence at trial regarding the July 21, 1987 civil ceremony in Beli Manastir, in the former Yugoslavia, there was no dispute over the fact that Michael Kovac and petitioner Lida Nosik were married in the Serbian Orthodox Church, St. George, Elizabeth, New Jersey on December 31, 1988 in a duly solemnized religious ceremony (App. A-25-37). At the St. George Orthodox Church, a record of marriage between petitioner Lida Nosik and Michael Kovac was kept in the church records (App. A-25).

There was a church seal on a record that was brought to Court by Father Petar Petrovic which was part of the marital registry book kept by the church. (App. A-25-28). That marital registry book reflects an entry made on December 31, 1988 by Father Gvodzm Petrovic (App. A-29) who was the priest who performed the marriage (App. A-25-29). There was no challenge to Father Gvodzm Petrovic's bona fides as a duly ordained priest of the Serbian Orthodox Church.

Zoran Jovanovic testified that he was a parishoner/member at St. George's parish, and that he had been a member of the parish since 1975 (App. A-30-32). Jovanovic was a witness at the wedding ceremony of Lida Nosik and

Michael Kovac on December 31, 1988 at St. George's Serbian Orthodox Church (App. A-30-32). Milka Petrovic also testified that she was present as a witness at petitioner's wedding where Father Gvodzm Petrovic presided (App. A-32-37).

Milka Petrovic testified that she was an American citizen born in Serbia. She witnessed the religious wedding ceremony and identified her name in the marital registry (App. A-33). She agreed to be a witness and described the ceremony from her position standing in back of Lida Nosik and was given two candles to hold by the priest (App. A-34-35). Both Jovanovic and Milka Petrovic walked around the altar three times behind Lida Nosik and Kovac (App. A-35). The ceremony took approximately 40-45 minutes (App. A-35). Her testimony was not challenged by the State, and she had previously been interviewed by Inspector D'Alessio of the Danbury State Attorney's office. (App. A-36-37).

V. REASONS FOR GRANTING THE WRIT

THE REFUSAL BY THE CONNECTICUT SUPREME COURT TO ACCEPT THE UNCONTRADICTED AND UNDISPUTED TESTIMONY OF A DULY ORDAINED PRIEST OF THE SERBIAN ORTHODOX CHURCH AND TWO INDEPENDENT WITNESSES THAT PETITIONER LIDA NOSIK AND MICHAEL KOVAC WERE MARRIED IN A DULY SOLEMNIZED RELIGIOUS WEDDING CEREMONY AND THE SUBSTITUTION OF ITS SECULAR JUDGMENT THAT THE CEREMONY WAS

NOT A WEDDING VIOLATES PETITIONER'S RIGHTS UNDER THE ESTABLISHMENT CLAUSE AND FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

It is the settled law of the State of Connecticut that a ceremonial marriage contracted without a marriage license is not null and void, **Carabetta vs. Carabetta**, 182 Conn. 344, 438 A.2d 109 (1980); "marriage is strongly favored by the law"; **Carabetta vs. Carabetta**, 182 Conn. 344, 438 A.2d at 113 (concurring opinion, Bogdanski J.) "[E]xisting marriages are presumed to be valid and that presumption has been described by the courts as very strong." Id. "It is a presumption that grows stronger with the passage of time, is especially strong when legitimacy of children is involved, and can only be negated by disproving every reasonable possibility that it is valid." Id, 182 Conn. 344, 438 A.2d at 113.

Although Connecticut has prescribed two formalities for the effectuation of a legally valid marriage, a marriage license and solemnization, the Connecticut Supreme Court has held that under Connecticut law a marriage consummated after the issuance of a license that is deficient for want of due solemnization, **Hames vs. Hames**, 163 Conn. 588, 316 A.2d 379 (1972) and a marriage duly solemnized but deficient for want of a marriage license is not in either instance void,

Carabetta vs. Carabetta, **supra**, 182 Conn. 344, 438 A.2d at 111 (1980).

The public policy of Connecticut in favor of upholding a marriage is articulated in **Hames** and **Carabetta** as follows:

> "The policy of the law is strongly opposed to regarding an attempted marriage... entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation, to be void."

Carabetta vs. Carabetta, **supra**, 182 Conn. at 346-47, 438 A.2d at 111. (1980); **Hames vs. Hames**, **supra**, 163 Conn. 588, 599, 316 A.2d 379, 385 (1972).

After oral argument before the Connecticut Supreme Court in December 1997 the Chief Clerk of the Supreme Court sent supplemental interrogatories to the trial judge on December 8, 1997; (App. A-15). On January 12, 1998 the trial judge answered the interrogatories propounded to him by the Connecticut Supreme Court as follows:

> No, I did not find that a religious **marriage** ceremony participated in by the defendant Lida Nosik and Michael Kovac actually took place on December 31, 1988 in the Serbian Orthodox Church in Elizabeth, New Jersey. I did

> find that a religious celebration participated in by the defendant Lida Nosik and Michael Kovac took place. It was to celebrate an event which allegedly already took place in the past. I did not find that this celebration was participated in by the defendant Lida Nosik in good faith with the intention to enter into a valid legal marriage. (App. A-17-18).

The Connecticut Supreme Court adopted that supplemental finding by the trial judge in its opinion, **State vs. Nosik**, 245 Conn. at 204-205. (App. A-8-9).

For the following reasons, the refusal by the trial judge and the Connecticut Supreme Court to accept the undisputed and uncontradicted testimony of a duly ordained priest of the Serbian Orthodox Church and two independent witnesses that the priest had performed an actual religious wedding ceremony in the Serbian Orthodox Church at Elizabeth, New Jersey on December 31, 1988 was a violation of Lida Nosik's rights under the First Amendment's Establishment Clause and Free Expression Clause and

the Due Process Clause of the Fourteenth Amendment.[1]

"A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion," **Board of Education of Kiryas Joel vs. Grumet**, 512 U.S. 687, 696, 114 S.Ct. 2481, 2487, 129 L.Ed. 2d 546 (1994); **Committee For Public Ed. & Religious Liberty vs. Nyquist**, 413 U.S. 756, 792-793, 93 S.Ct. 2955, 2975, 37 L.Ed.2d 948 (1973), favoring neither one religion over others nor religious adherents collectively over nonadherents." See also, **Epperson vs. Arkansas**, 393 U.S. 97, 104, 89 S.Ct.

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[1] In response to the trial court's question as to whether a religious marriage ceremony would be valid if Father Petar Petrovic later learned that the individuals who had been married in a religious ceremony had not previously entered into a civil marriage ceremony, Father Petar Petrovic testified that it would have no impact on the religious ceremony (App. A-37-38). For example, Father Petrovic testified that he conducted a Baptism in which the godfather, unbeknown to the priest, had not been baptized himself. Although, Father Petrovic later learned that the godfather had not been baptized, the baptism remain unaffected and was legitimate (App. A-37-38).

266, 270, 21 L.Ed.2d 228 (1968). "It is true that religious people (or groups of religious people) cannot be denied the opportunity to exercise the rights of citizens simply because of their religious affiliations or commitments for such a disability would violate the right to religious free exercise, see **McDaniel vs. Paty**, 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978), which the First Amendment guarantees as certainly as it bars any establishment". **Board of Education of Kiryas Joel vs. Grumet**, **supra**, 512 U.S. 687, 698, 114 S.Ct. at 2489.

Although the Establishment and Free Exercise Clauses of the First Amendment constitute distinct protections, they embody "correlative and coextensive ideas representing only different facets of the single great and fundamental freedom [of religion]" **Everson vs. Board of Education of Ewing Tp.**, 330 U.S. 1, 40, 67 S.Ct. 504, 523, 91 L.Ed. 711 (1947) (Rutledge J., dissenting). "[T]he Establishment Clause prohibits both the national government, and, through the operation of the Fourteenth Amendment, the states, from compelling an individual to participate in religion or its exercise, or otherwise from taking action that has the purpose or effect of promoting religion or a particular religious faith, **Lee vs. Weisman**, 505 U.S. 577, 587, 112 S.Ct. 2649, 2655, 120 L.Ed.2d 467 (1992); **Lynch vs. Donnelly**, 465 U.S. 668, 678, 104 S.Ct., 1355, 1361-62, 79 L.Ed.2d 604 (1984)"; **Venters vs. City of Delphi**, 123 F.3d 956 (7th Cir. 1997); **Kerr vs. Farrey**,

95 F.3d 472, 476, (7th Cir. 1996). "The Free Exercise Clause, by contrast, guards the individual's practice of her own religion against restraint or invasion by the government." **School Dist. of Abington Tp., Pa. vs. Schempp**, 374 U.S. 203, 222-23, 83 S.Ct. 1560, 1572, 10 L.Ed.2d 844 (1963). "[Neither a state nor a federal government] can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs for church attendance or non-attendance." **Everson vs. Board of Education of Ewing Tp., supra**, 330 U.S. at 15-16, 67 S.Ct. at 511.

Here, the Connecticut Supreme Court and trial court substituted its own secular beliefs in place of the undisputed testimony of a duly ordained priest of the Serbian Orthodox Church who testified that he actually married the petitioner Lida Nosik and Michael Kovac. It is precisely this kind of interference in ecclesiastical affairs and the ritual of a particular religious faith which the Establishment Clause forbids.

In **County of Allegheny vs. American Civil Liberties Union of Greater Pittsburgh**, 492 U.S. 573, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989) the Supreme Court adhered to the three part test set forth in **Lemon vs. Kurtzman**, 403 U.S. 602, 91 S.Ct. 2125, 29 L.Ed.2d 745 (1971) for determination whether a

government practice violates the Establishment Clause.

> Under the **Lemon** analysis, a statute or practice which touches upon religion, if it is to be permissible under the Establishment Clause, must have a secular purpose, it must neither advance nor inhibit religion in its principal or primary effect; and it must not foster an excessive entanglement with religion; **County of Allegheny vs. American Civil Liberties Union of Greater Pittsburgh**, supra, 492 U.S. at 592, 109 S.Ct. at 3100; citing **Lemon vs. Kurtzman**, 403 U.S. at 612-613, 91 S.Ct. at 2111.

Clearly, the Connecticut Supreme Court's finding that the religious wedding ceremony conducted by Father Gvodzm Petrovic was not really a wedding ceremony but was some kind of celebration of what had taken place in the past is precisely the kind of excessive entanglement with religion that the Establishment Clause forbids.

When the Connecticut Supreme Court decided **Carabetta** in 1980 conferring marital status upon individuals who had participated in a duly solemnized wedding ceremony even in the absence of a valid secular marriage license, the Connecticut Supreme Court could not then entangle itself in an ecclesiastical determination, unsupported by the record, that it would not credit the testimony of a

duly ordained priest and two independent witnesses all of whom testified that Father Gvodzm Petrovic married Lida Nosik and Michael Kovac on December 31, 1988 in a Serbian Orthodox ceremony in Elizabeth, New Jersey. The trial judge had no basis for making the irrational determination that there was a religious celebration but that it was to commemorate an event which took place in the past. There is no support in the record for such a finding and neither the trial judge nor the Connecticut Supreme Court had any basis to substitute its judgment for the undisputed testimony of an ordained clergyman testifying under oath that he performed a wedding ceremony in accordance with the rites of the Serbian Orthodox Church.

The decision by the Connecticut Supreme Court and the finding by the trial court rejecting the uncontradicted testimony of a Serbian Orthodox priest that he had married the petitioner and Michael Kovac denies the petitioner her First Amendment rights under the Free Exercise Clause. More than fifty years ago, the Supreme Court stated:

> Neither [a state nor the federal government] can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs for church attendance

or non-attendance.

Everson vs. Board of Education of Ewing Tp., 330 U.S. 1 at 15-16, 67 S.Ct. 504 at 511, 91 L.Ed. 711 (1947). The Free Exercise Clause guards an individual's practice of her own religion against restraint or invasion by the government. **School Dist. of Abington Tp., Pa. vs. Schempp**, 374 U.S. 203, 222-23, 83 S.Ct. 1560, 1572, 10 L.Ed.2d 844 (1963). In her concurring opinion in **Employment Div. Dept. of Human Res. vs. Smith**, 494 U.S. 872, 893, 110 S.Ct. 1595, 1607, 108 L.Ed.2d 876 (1990), Justice O'Connor recognizes that "'free exercise' of religion often, if not invariably, requires the performance of (or abstention from) certain acts." Free Exercise includes "[t]he practice and performance of rites and ceremonies, worship, etc.; the right or permission to celebrate the observances of a (religion) and "religious observances such as acts of public and private worship, preaching and prophesying. '[B]elief and action cannot be neatly confined in logic tight compartments.' **Wisconsin vs. Yoder**, 406 U.S. 205, 220, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)."

> Because the First Amendment does not distinguish between religious belief and religious conduct, conduct motivated by sincere religious belief, like the belief itself, must be at least presumptively protected by the Free Exercise Clause.

Employment Div. Dept. of Human Res. vs. Smith, **supra**, 494 U.S. at 893, 110 S.Ct. at 1608.

The holding of the Connecticut Supreme Court clearly burdens the religious practice of petitioner Lida Nosik in a fundamental way. The Connecticut Supreme Court denied marital status to Lida Nosik who had participated in a duly solemnized wedding ceremony in the Serbian Orthodox Church when the same court had granted marital status to **Carabetta** in 1980 where **Carabetta** had participated in a duly solemnized wedding ceremony in the Roman Catholic Church even in the absence of a valid marriage license.

The impact of the Connecticut Supreme Court's decision in **Nosik** is to burden the petitioner's religious beliefs and practices to the point where she has effectively been denied not only the rites of her religious faith but also the constitutional right freely to exercise her religious beliefs and to be free from the intrusion by a secular court into the ritual and ecclesiastical law of the Serbian Orthodox church. The First Amendment does not permit a secular court to vitiate a religious wedding ceremony by interpreting it to be something other than what it actually was.

> "...Whenever the State itself speaks on a religious subject, one of the questions we must ask is "whether the government

> intends to convey a message of endorsement or disapproval of religion."

Wallace vs. Jaffree, 472 U.S. 38, 60-61, 105 S.Ct. 2479, 2492, 86 L.Ed.2d 29 (1985). The Connecticut Supreme Court clearly registered its disapproval of petitioner's religious wedding ceremony conducted by an ordained priest in accordance with the rites of the Serbian Orthodox Church. Its decision to substitute its secular interpretation for that of the Orthodox church is a clear violation of both the Establishment and Free Exercise Clauses of the First Amendment.

The petitioner has been denied her First Amendment rights under the First and Fourteenth Amendments of the United States Constitution guaranteed to her in **Cantwell vs. Connecticut**, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

The Petitioner was also denied her Fourteenth Amendment right to due process of law when she was denied her defense that she could represent on her application for group medical insurance benefits that she was in fact married in a duly solemnized religious wedding ceremony on December 31, 1988. By nullifying the undisputed testimony of the priest and two independent witnesses that Lida Nosik and Michael Kovac had in fact been married in a religious wedding ceremony in the Serbian Orthodox Church, the Connecticut Supreme Court effectively denied the petitioner her defense that

she had a good faith basis to represent that she was in fact married when she represented her marital status on her application for group medical insurance benefits. The religious wedding ceremony which took place on December 31, 1988 preceded the application for group medical insurance benefits which was filled out by the petitioner in May 1991 by nearly 2 1/2 years. Therefore, there was no connection between the wedding ceremony and the application for group medical insurance benefits which was the basis for the larceny charge of which the petitioner was convicted.

It is respectfully submitted that the decision by the Connecticut Supreme Court presents a direct conflict with the decisions of the United States Supreme Court interpreting the Establishment and Free Exercise Clauses of the First Amendment and the Due Process Clause of the Fourteenth Amendment. Therefore, Petitioner prays that this Court grant her petition for a writ of certiorari.

Respectfully submitted,
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No. _____

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STATE OF CONNECTICUT *v.* LIDA NOSIK
(SC 15652)

Callahan, C. J., and Berdon, Norcott, Palmer and Peters, Js.

Syllabus

Convicted of the crime of larceny in the second degree in connection with her receipt of insurance benefits on behalf of an individual, K, whom she listed as a dependent spouse in her application for employee health insurance, the defendant appealed to the Appellate Court. The defendant claimed, inter alia, that she had married K in a religious ceremony performed in New Jersey. The Appellate Court affirmed the judgment of the trial court, and the defendant, on the granting of certification, appealed to this court. *Held*:

1. The Appellate Court properly concluded that the defendant's alleged marriage to K in New Jersey did not constitute a valid marriage under this court's decision in *Carabetta* v. *Carabetta* (182 Conn. 344); the defendant did not participate in the ceremony with the good faith intention of entering into a valid legal marriage, and she and K did not hold themselves out as husband and wife.
2. The trial court's finding of fact that the ceremony performed in New Jersey was not a valid wedding ceremony was not clearly erroneous.
3. The trial court reasonably could have determined beyond a reasonable doubt that the defendant did not have a good faith belief that she was married to K at the time she claimed him as her husband for insurance purposes, and that she was, therefore, guilty of larceny in the second degree.

Argued December 3, 1997—officially released June 30, 1998

Substitute information charging the defendant with two counts of the crime of insurance fraud and one count of the crime of larceny in the second degree, brought to the Superior Court in the judicial district of Danbury, geographical area number three, and tried to the court, *Riefberg, J.*; thereafter, the court granted the defendant's motion for judgment of acquittal of two counts of insurance fraud and rendered judgment of guilty of larceny in the second degree, from which the defendant appealed to the Appellate Court, *Landau, Schaller* and *Spear, Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

PETERS, J. The principal issue in this appeal is whether the defendant, Lida Nosik, had the intent necessary for a conviction of larceny in the second degree in violation of General Statutes § 53a-123.[1] The answer to this question turns on whether the defendant lacked a good faith belief that she was legally married to Michael Kovac, also known as Milivoje,[2] whom she listed as a dependent spouse in her application for her employee health insurance policy.

The defendant was charged with the crime of larceny in the second degree.[3] After a trial to the court, *Riefberg, J.*, she was found guilty as charged and sentenced to a period of imprisonment of two years, execution suspended, and a period of probation of five years. The trial court also ordered her to pay restitution.

The defendant appealed to the Appellate Court from the judgment of conviction. The Appellate Court affirmed the judgment of the trial court and rejected the defendant's claims that the trial court improperly had found that: (1) the evidence was sufficient to support her conviction; and (2) the charging document stated an offense under the second degree larceny statute. *State* v. *Nosik*, 44 Conn. App. 294, 295, 689 A.2d 489 (1997).

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[1] General Statutes § 53a-123 provides in relevant part: "(a) A person is guilty of larceny in the second degree when he commits larceny as defined in section 53a-119 and . . . the value of the property or service exceeds five thousand dollars . . . ."

General Statutes § 53a-119 provides in relevant part: "Larceny defined. A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. . . ."

[2] The parties agree that Michael Kovac and Milivoje Kovac are the same person.

[3] The defendant initially was charged with insurance fraud and larceny. The trial court granted the defendant's motion for acquittal on the insurance fraud counts and convicted the defendant of second degree larceny only.

The defendant petitioned for certification to appeal to this court. We granted certification to review the following two questions: "Whether the Appellate Court properly held that: (1) the evidence of the defendant's alleged marriage in New Jersey did not establish a valid marriage under Connecticut law; and (2) as such, the evidence presented at the defendant's trial was sufficient to convict the defendant?" *State* v. *Nosik*, 240 Conn. 922, 692 A.2d 817 (1997). We affirm the judgment of the Appellate Court.

The trial court reasonably could have found the following facts. In September, 1985, the defendant was hired by the Danbury board of education as a school psychologist. On her payroll data sheet, she indicated that she was single. On December 8, 1988, the defendant applied to change her insurance to Blue Cross and Blue Shield of Connecticut, Inc. On her application, she changed her marital status from single to married, and indicated that she had married Kovac on July 5, 1987. On July 1, 1991, the Danbury board of education changed its employee health insurance plan from Blue Cross and Blue Shield of Connecticut, Inc., to CIGNA Healthcare of Connecticut, Inc. (CIGNA). Under the CIGNA plan, only an employee's children and legal spouse were eligible for benefits as dependents. In completing her CIGNA application, the defendant listed Kovac as her husband and the father of her son, Michael.

Between July 1, 1991, and October 6, 1993, CIGNA paid claims totaling $10,692.94 to medical providers on behalf of Kovac. On October 6, 1993, the defendant's employer requested that she produce proof of her marriage to Kovac. Because the defendant failed to produce any such proof, her employer filed a complaint with the Danbury police department. The defendant was charged with insurance fraud and larceny.[4] Rejecting

[4] See footnote 3 of this opinion.

her claims that she had entered twice into valid marriage with Kovac, once in the former Yugoslavia and subsequently in New Jersey, the trial court found her guilty of larceny in the second degree.

Following oral argument in this court, we requested an articulation of the trial court's findings of fact regarding the 1988 New Jersey religious marriage ceremony allegedly celebrating the marriage between the defendant and Kovac. In its articulation dated January 12, 1998, the trial court responded that it did not find that a religious *marriage* ceremony had taken place in New Jersey. Rather, it concluded that the defendant had participated in a purported religious ceremony with Kovac to commemorate a marriage that allegedly already had taken place. Furthermore, the trial court did not find that the defendant had participated in this ceremony with the good faith intention of entering into a valid legal marriage.[5]

In this court, the defendant raises one legal issue and two evidentiary questions. She claims that: (1) the Appellate Court improperly concluded that a religious marriage ceremony in New Jersey did not establish a valid marriage under Connecticut law; (2) the trial court's factual finding that she did not participate in good faith in a religious marriage ceremony in New Jersey was clearly erroneous; and (3) the Appellate Court improperly rejected her contention that the evidence presented at her trial was insufficient to support her conviction. We disagree with these claims and affirm the judgment of the Appellate Court.

I

We first address the question of law raised by the defendant's purported ceremonial marriage in New Jersey. We must determine whether the Appellate Court

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[5] The parties were afforded the opportunity to challenge or to defend the merits of the trial court's supplemental ruling.

properly concluded that the alleged marriage ceremony in New Jersey did not constitute a valid legal marriage in Connecticut under this court's decision in *Carabetta* v. *Carabetta*, 182 Conn. 344, 350, 438 A.2d 109 (1980). We affirm the judgment of the Appellate Court.

Proper application of our decision in *Carabetta* depends on findings of fact. Unless the findings of fact in this case were overturned, a course which we decline to follow in part II A of this opinion, the defendant's purported union would not constitute a valid legal marriage under *Carabetta*. In *Carabetta*, the "plaintiff and the defendant exchanged marital vows before a priest in the rectory of Our Lady of Mt. Carmel Church of Meriden . . . according to the rite of the Roman Catholic Church . . . ." Id., 345. They failed, however, to obtain a marriage license. Id. "Thereafter they lived together as husband and wife, raising a family of four children, all of whose birth certificates listed the defendant as their father." Id. Until the time of the dissolution action, the defendant husband "had no memory or recollection of ever having denied that the plaintiff and the defendant were married." Id.

In *Carabetta*, we analyzed our statutes governing marriage and marriage licenses, and determined that "the legislature's failure expressly to characterize as void a marriage properly celebrated without a license means that such a marriage is not invalid." Id., 349. Accordingly, we concluded that: " 'The policy of the law is strongly opposed to regarding an attempted marriage . . . entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation, to be void.' " Id., 346–47. We further noted that "most such cases arise long after the parties have acted upon the assumption that they are married, and no useful purpose is served by avoiding the long-standing relationship." (Internal quotation marks omitted.) Id., 351.

Thus, in *Carabetta*, we decided not to invalidate legally imperfect marriages if the parties had: (1) participated in a religious rite with the good faith intention of entering into a valid legal marriage; and (2) shared and manifested a good faith belief that they were, in fact, legally married. We conclude in part II of this opinion that neither of these predicates has been established in this case.[6] First, the trial court found that the defendant did not participate in the ceremony in New Jersey with the good faith intention of entering into a valid legal marriage, and we conclude in part II A that we should not disturb that finding. Second, as we discuss in part II, far from holding themselves out as husband and wife, the defendant and Kovac made numerous inconsistent statements—on official documents, in sworn proceedings, and in daily life—describing themselves as single or divorced individuals.[7]

We conclude, therefore, that this court's decision in *Carabetta* does not require reversal of the defendant's conviction in this case. Accordingly, on this issue, we affirm the judgment of the Appellate Court.

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[6] Even if the defendant's alleged ceremonial marriage had been valid as a matter of Connecticut law, it would have been invalid under New Jersey law. New Jersey Statutes §§ 37:1-2 and 37:1-10 set forth in footnote 8 of this opinion; see *Dacunzo* v. *Edgye*, 19 N.J. 443, 450, 117 A.2d 508 (1955). Such a factual scenario would present a conflict of laws issue. Because the defendant's claimed ceremonial marriage did not meet the requirements of the *Carabetta* test, however, we do not reach the potential conflict of laws problem.

[7] Kovac's statements regarding his marital status are not relevant to the defendant's mental state. Insofar as Kovac's statements are relevant to the issue of whether he and the defendant held themselves out to the world as a married couple, we note that he, too, denied having been married during the relevant time period. In 1991, Kovac filed a petition for naturalization with the Immigration and Naturalization Service indicating that he was single. In 1992, he submitted a form in support of his application indicating that he had not married since filing his petition. Kovac's certificate of naturalization, issued in 1992, states that he is single. In a 1992 deposition in a civil case regarding an insurance matter, Kovac testified that he and the defendant never had been married.

II

We next address the defendant's evidentiary claims. The defendant argues that: (1) the trial court's finding of fact regarding her purported marriage ceremony in New Jersey was clearly erroneous; and (2) the evidence at trial was insufficient to support her conviction for second degree larceny. We reject both these claims and, therefore, affirm the judgment of the Appellate Court.

A

We first must determine whether the trial court's finding of fact regarding the defendant's alleged religious marriage ceremony in New Jersey was clearly erroneous. We conclude that it was not.

The defendant claims that she was, in fact, married to Kovac. She also argues that, even if she was not legally married, she participated in a religious marriage ceremony with the good faith intention of marrying Kovac, thereby negating the mens rea required for a conviction of larceny in the second degree.

Our analysis of the trial court's findings regarding the alleged religious marriage in New Jersey must start by taking account of the fact that, at trial, the defendant also claimed that she and Kovac had been married in a civil ceremony on July 21, 1987, in Beli Manastir in the former Yugloslavia. In response, the state introduced evidence that the defendant and Kovac had been in the United States at that time. The state also produced expert testimony that the marriage certificate that the defendant had offered was not authentic. In light of that evidence, the Appellate Court concluded that the trial court reasonably could have found that the defendant and Kovac were not married in the former Yugoslavia in 1987. *State* v. *Nosik*, supra, 44 Conn. App. 299. In this court, the defendant does not challenge the validity of that determination.

Here, as at trial and before the Appellate Court, the defendant alleges that she and Kovac participated in a religious marriage ceremony in the Serbian Orthodox Church in Elizabeth, New Jersey, on December 31, 1988. At trial, Father Gvodzm Petrovic testified that he was an ordained priest and that he had performed the marriage ceremony at St. George's Church. Zoran Jovanovic, a parishioner of St. George's Church, testified that he had witnessed the ceremony. Milka Petrovic testified that she too had acted as a witness. Through Father Petar Petrovic, the pastor of St. George's Church, the defendant introduced a record of the ceremony in the church marriage registry. No one introduced evidence, however, that a marriage license had been issued as required by New Jersey Statutes §§ 37:1-2 and 37:1-10.[8]

In its articulation dated January 12, 1998, the trial court stated that it did not find that a religious *marriage* ceremony had taken place in New Jersey. Rather, it concluded that the defendant had participated in the purported religious ceremony with Kovac to commemorate a marriage that allegedly already had taken place. Furthermore, the trial court did not find that the defendant had participated in this ceremony with the good

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[8] New Jersey Statutes Annotated § 37:1-2 (West 1968) provides in relevant part: "Before a marriage can be lawfully performed in this state, the persons intending to be married shall obtain a marriage license from the licensing officer and deliver it to the person who is to officiate, but if the marriage is to be performed by or before any religious society, institution or organization, the license shall be delivered to such religious society, institution or organization, or any officer thereof. . . ."

New Jersey Statutes Annotated § 37:1-10 (West 1968) provides in relevant part: "[N]o marriage contracted on and after December first, nineteen hundred and thirty-nine, shall be valid unless the contracting parties shall have obtained a marriage license as required by section 37:1-2 of this Title, and unless, also, the marriage, after license duly issued therefor, shall have been performed by or before any person, religious society, institution or organization authorized by section 37:1-13 of this Title to solemnize marriages; and failure in any case to comply with both prerequisites aforesaid, which shall always be construed as mandatory and not merely directory, shall render the purported marriage absolutely void."

faith intention of entering into a valid legal marriage based on a prior marriage in Yugoslavia.

" 'A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record.' " *State* v. *Joyce*, 243 Conn. 282, 288, 705 A.2d 181 (1997); *State* v. *Oquendo*, 223 Conn. 635, 645, 613 A.2d 1300 (1992); see Practice Book (1998 Rev.) § 60-5, formerly § 4061. A reviewing court " 'cannot retry the facts or pass on the credibility of the witnesses.' " *Connecticut National Bank* v. *Giacomi*, 242 Conn. 17, 65, 699 A.2d 101 (1997). "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. In applying the clearly erroneous standard to the findings of a trial court, we keep constantly in mind that our function is not to decide factual issues de novo. Our authority, when reviewing the findings of a judge, is circumscribed by the deference we must give to decisions of the trier of fact, who is usually in a superior position to appraise and weigh the evidence. . . . The question for this court . . . is not whether it would have made the findings the trial court did, but whether in view of the evidence and pleadings in the whole record it is left with the definite and firm conviction that a mistake has been committed." (Citation omitted; internal quotation marks omitted.) *Doyle* v. *Kulesza*, 197 Conn. 101, 105, 495 A.2d 1074 (1985).

We conclude that, in light of the evidence in the record, the trial court's factual findings regarding the ceremony in New Jersey were not clearly erroneous. Father Petar Petrovic testified, as pastor at St. George's Church, that, if a couple told him that they did not have a marriage license and never had participated in a civil ceremony, he would not perform a religious wedding

rite for them.[9] In the space marked "license" on the certificate issued by St. George's, the registrar indicated that the defendant and Kovac previously had been married in a civil ceremony in the former Yugoslavia. Thus, the trial court reasonably could have concluded that the service at St. George's was not a solemnization of the defendant's alleged previous civil marriage, but a nullity, a ploy by the defendant and Kovac to avoid a valid marriage. The defendant now has virtually conceded that, in fact, she had not participated in a civil ceremony abroad.

In addition, the defendant's numerous conflicting statements regarding her marital status during the relevant time period support the conclusion that she did not have a good faith intent to enter into a valid legal marriage. The defendant filed her 1987 tax return as a single person, despite the fact that Internal Revenue Service regulations require individuals who are married during a calendar year to file as married people. The defendant's certified public accountant testified at trial that he had prepared her 1988, 1989 and 1990 tax returns as a head of household filing, and that he would not have done so had the defendant told him she was married. In a civil trial in 1991, the defendant testified under oath that Kovac was only "a friend." When asked if she ever had dated Kovac, she responded, "We are friends, so that means no." In another civil case, also in 1991, the defendant testified that she knew Kovac because she did typing for him, and, in another colloquy, because he had done plumbing work for her. In a statement and

[9] Father Petar Petrovic also testified that if a parishioner lied about having undergone a civil marriage ceremony, and thereby induced him to perform a religious rite, he would consider the religious marriage valid in a spiritual sense. This statement does not necessarily contradict, however, the trial court's finding that the ceremony at St. George's was not a *wedding* ceremony, but rather the commemoration of an alleged marriage in the past.

an affidavit relating to a 1992 motor vehicle insurance claim, the defendant attested that she was divorced.[10]

In light of these facts, the trial court reasonably could have concluded that the defendant did not participate in the ceremony in New Jersey with the good faith belief that she was entering into a valid legal marriage. We conclude, therefore, that the trial court's finding that the service at St. George's was not a valid wedding ceremony was not clearly erroneous.

B

Finally, we must determine whether there was sufficient evidence to support the defendant's conviction for larceny in the second degree. The critical issue before the trial court was whether the defendant had the intent to commit larceny when she claimed Kovac as her spouse on her insurance form.

The requisite intent for larceny in the second degree is "the intent permanently to deprive the owner of the property without color of right or excuse for the act." *State* v. *Rochette*, 25 Conn. App. 298, 305–306, 594 A.2d 1006, cert. denied, 220 Conn. 912, 597 A.2d 337 (1991), cert. denied, 502 U.S. 1045, 112 S. Ct. 905, 116 L. Ed. 2d 806 (1992). Accordingly, the state bore the burden of proving beyond a reasonable doubt that the defendant "knowingly [made] a false representation with the intent to defraud, and that [that] false representation . . . induce[d] action that effectively cause[d] the accused to receive something of value without compensation." Id., 306.

[10] To support her claim that she was married, the defendant offered the now discredited marriage certificate from her alleged civil marriage ceremony in the former Yugoslavia, her son's school registration forms indicating his parents' marital status as married, a letter from her son's Boy Scout troop referring to the defendant as "Lida Kovac," and a 1993 mortgage agreement referring to "Lida Nosik, A Married Woman."

Intent to defraud almost always must be proven by circumstantial evidence. See *State* v. *Green*, 194 Conn. 258, 273, 480 A.2d 526 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 964, 83 L. Ed. 2d 969 (1985); *State* v. *Holley*, 174 Conn. 22, 25–26, 381 A.2d 539 (1977). "A person's intent is to be inferred from his conduct and the surrounding circumstances and is an issue for the [trier of fact] to decide." *State* v. *Rochette*, supra, 25 Conn. App. 306.

"The standard of review employed in a sufficiency of the evidence claim is well settled. [W]e apply a two-part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [trier of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Torres*, 242 Conn. 485, 489, 698 A.2d 898 (1997). " 'On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [trier of fact's] verdict of guilty.' " Id., 490.

We are persuaded that the trial court reasonably could have found that the evidence was sufficient to support the defendant's conviction. As we observed in part II A of this opinion, during the relevant time period, the defendant made numerous inconsistent statements regarding her marital status on official forms and in sworn proceedings. "In evaluating evidence that could yield contrary inferences, the trier of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The trier [of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be

reasonable and logical." (Citation omitted; internal quotation marks omitted.) *State* v. *DeJesus*, 236 Conn. 189, 195–96, 672 A.2d 488 (1996).

We conclude that the trial court reasonably could have determined, beyond a reasonable doubt, that the defendant did not have a good faith belief that she was married to Kovac at the time she claimed him as her husband for insurance purposes. We concur with the Appellate Court, therefore, that the trial court reasonably could have concluded that the defendant was guilty of second degree larceny. *State* v. *Nosik*, supra, 44 Conn. App. 302.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

Andrew B. Bowman, for the appellant (defendant).

Michael E. O'Hare, deputy assistant state's attorney, with whom, on the brief, were *Walter D. Flanagan*, state's attorney, and *Kevin Black*, deputy assistant state's attorney, for the appellee (state).

STATE OF CONNECTICUT

SUPREME COURT

NO. SC 15652

STATE OF CONNECTICUT

V. JULY 29, 1998

LIDA NOSIK

O R D E R

THE MOTION OF THE DEFENDANT, FILED JULY 10, 1998, FOR REARGUMENT EN BANC AND FOR RECONSIDERATION, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY O R D E R E D DENIED.

BY THE COURT,

/S/ Francis J.Drumm, Jr.
CHIEF CLERK

NOTICE SENT: JULY 29, 1998
MICHAEL E. O'HARE, ASSISTANT STATE'S ATTORNEY
ANDREW B. BOWMAN
CLERK, DANBURY J.D. (CR94-00087866S)
HON. MORTON I. RIEFBERG
RJD
ct 015

STATE OF CONNECTICUT

Francis J. Drumm, Jr.
Chief Clerk
860-566-6243

SUPREME COURT
APPELLATE COURT
860-566-8160

231 Capitol Avenue
Drawer Z, Station A
Hartford, CT 06106

December 8, 1997

The Honorable Morton I. Riefberg
Superior Court
146 White Street
Danbury, CT 06810

Re: SC 15652 State vs. Nosik

Dear Judge Riefberg:

The Court asked that I send you the following questions regarding the captioned matter, argued December 3, 1997:

a. Did you find that a religious marriage ceremony participated in by the defendant Lida Nosik and Michael Kovac actually took place on December 1, [sic] 1988 in the Serbian Orthodox Church in Elizabeth, New Jersey?

b. If you did so find, did you find that the ceremony was participated in by the defendant Lida Nosik in good faith with the intention to enter into a valid legal marriage?

Please forward your responses to me. I will distribute them to the Court and send notices to all counsel of record.

Very truly yours,

Francis J. Drumm, Jr.

cc. all counsel of record

MORTON I. RIEFBERG
JUDGE TRIAL REFEREE

SUPERIOR COURT
146 WHITE STREET
DANBURY, CT 06810

January 12, 1998

Mr. Francis J. Drumm, Jr., Chief Clerk
Supreme Court, State of Connecticut
231 Capitol Avenue
Drawer Z, Station A
Hartford, CT 06106

Re: SC 15652 State v. Nosik

Dear Mr. Drumm:

Reference is made to your letters dated December 8, 1997 and December 11, 1997 which were faxed to me in Florida. Upon my arrival back in Danbury, I proceeded to review this matter. Reference is also make to our telephone conversation on January 2, 1998. I am now back in Florida.

My responses are as follows:

A. No, I did not find that a religious **marriage** ceremony participated in by the defendant Lida Nosik and Michael Kovac actually took place on December 31, 1988 in the Serbian Orthodox Church in Elizabeth, New Jersey.

I did find that a religious celebration participated in by the defendant Lida Nosik and Michael Kovac took place. It was to celebrate an event which allegedly already took place in the

past. I did not find that this celebration was participated in by the defendant Lida Nosik in good faith with the intention to enter into a valid legal marriage.

Sincerely,

MORTON I.
REIFBERG
JUDGE TRIAL
REFEREE

Notice sent: 1/21/98
Andrew B. Bowman
Michael E. O'Hare,
D.A.S.A.
Clerk, Danbury J.D.
(CR94-0087866S)

EXCERPTS OF TRIAL TESTIMONY

JOHN ERIQUEZ

Transcript Page 31

A: The Board of Education changed carrier from Blue Cross/Blue Shield to Cigna Insurance for effective July 1, 1991. In the spring of 1991, all employees -- we had employment enrollment meetings, forms were sent out to employees to make their selection for insurance as to what type of coverage they wished.

***

Q: Was it made at the time of the event or occurrence of the change or within a reasonable time thereof?

A: It was made prior to the new insurance policy going into effect July 1, 1991. It's not dated by the defendant, so I would -- It was done during the May time, returned to personnel by May 22nd.

Transcript Page 32

Q: Showing you State's Exhibit Number Three, Mr. Eriquez, does the form indicate eligible dependents.

A: Yes.

Q: And can you tell me who was listed as eligible dependents on that form?

A: Michael Kovac and Michael Dovrow Kovac.

Q: Does it indicate the relationship to those parties to the insured?

A: Yes.

Q: And what does it say for Michael Kovac?

A: Husband.

Q: And do you -- I'm sorry. Did you already testify as to when you switched over to Cigna?

A: We switched over effective July 1, 1991.

Transcript Pages 39

Q: Okay. That's not the only thing that form reflects. Does it?

A: No.

Q: It also reflects the fact the addition of a new -- of a child. Right? A newborn?

A: Correct.

Q: Right? Michael Dovrow. Born on what day? Does it say?

A: Date of birth is 1-8-88.

STIPULATION - EMPLOYEE INSURANCE CONTRIBUTOR

Transcript Page 5

Mr. Black: And the final stipulation, Your Honor, is an agreement that had been reached about any physical evidence. The State will stipulate that the defendant paid no less money than anybody else in the Danbury Board of Education system that had a family plan.

In other words, there are two amounts that can be paid by an employee; the single rate and the family rate. So even if it had been the defendant and her son without Mr. Kovac, it would have been the exact same rate as it was for the defendant, her son, and Mr. Kovac.

LIDA NOSIK

Transcript Pages 9-10

Q: How old are you?

A: Forty-Six.

Q: And what - what is your occupation?

A: I am a school psychologist.

Q: And how long have you been a school psychologist?

A: Since 1985. In the fall of 1985

to the present.

Q: Okay. What did you do prior to that?

A: I was a teacher.

***

A: Then I received a grant from 1982 to '85 from Fairfield University in bilingual school psychologist. I received another Masters Degree, Master of Science, in a sixth year certificate of studies. That's when I graduated in '85. And there I became a full-time school psychologist in Danbury from '95 - '85. And --

***

Q: Okay. What is your nationality?

A: My culture of heritage, my nationality from my parents, is Ukrainian and Russian.

Q: Okay. And where are - whare are you from originally?

A: I was born in Venezuela, South America.

Q: In Venezuela. And what is your current citizenship status?

A: Right now is United States, but to my knowledge, by birth, I consider myself a Venezuelan citizen too.

Transcript Pages 11 - 12

Q: And have the two of you lived together? About -- Why don't you tell me this: About what year did you meet him, if you can recall? Approximately when?

A: I met him when I was a young girl about eighteen, and we met and then I --

Q: About how many years ago?

A: Twenty-some odd years. But then in 1970 - mid seventies, we -- we started living together.

Q: You began to live together -

A: Yes.

Q: (Continuing) -- in the mid-seventies?

A: About. Yes.

Q: Okay. Now, this is 1995. Have you lived together consistently since the mid seventies - from the mid-seventies to the present?

A: No. There were times that we have separated.

Q: Okay. Based on problems or just -

A: Because of conflicts --

Q: (Continuing) - convenience?

A: (Continuing) - and we had some difficulties. We had personal problems and --

Q: Okay.

A: (Continuing) - those are the moments we separated.

Q: Okay. Are you married?

A: Yes, I am.

Q: And when -- Could you tell us when and where you were married?

A: I was married July 21st, 1987 in Yugoslavia.

Q: To whom:

A: To Michael Kovac.

Q: Okay. At the time - you said you got married in 1987 but yet you were living with Mr. Kovac since the mid-seventies?

A: Yes.

Q: What suddenly made you decide in 1987 to get married to Mr. Kovac?

A: I was pregnant.

Q: How old were you at that time when you got pregnant?

A: I was thirty - my latter part of thirty-eight.

Q: Thirty-eight.

A: When I got pregnant.

Q: Okay. So in 1987 you got pregnant and at that time you decided to get married to Mr. Kovac. Is that right?

A: And I was thirty-nine years old when I got married; my birthday is July 5th.

PETAR PETROVIC

Transcript Page 46

Q: OK. Did you perform a search of the -- marital records of St. George's.

A: Yes. I did.

Q: OK. Does there exist a record in the marital records of St. George's for indicating a marriage between Michael Kovac and Lida Nosik.

A: Yeah, there is a record.

Q: OK. And, what is the date of that record if -- if recall - why don't we do this?

A: All right.

***

Q: Can you tell us do the records indicate a date on which a marriage took place?

A: Yes.

Q: And, what is that date?

A: I recall that date, 31st of December, 1988.

Q: December 31st, 1988.

Transcript Page 3

Q: All right. Now, at the end of the session last week, you informed us that you had in your possession a -- a register -- a marital registry book.

A: Yes.

Q: And, that you would bring that today. Did you bring that book--

Transcript Pages 4-5

A: OK. This book maintains, I don't know exactly from what year, all marriages.

Q All marriages that occurred where?

A: In St. George -- in St. George Serbian Orthodox Church, Elizabeth New Jersy.

Q: OK. Now, does it contain entries that you did necessarily yourself personally?

A: Yes.

Q: OK. Does it contain entries that other priests who were there before you also did?

A: Yes.

Q: All right. Now, I'd like you to go to page where a certain entry is being made on December 31, 1988

(Whereupon the witness briefly reviewed the referred to book.)

A: Yeah.

Q: All right. Does it -- does does the book reflect whether an entry was made reflecting a marriage that occurred on that day?

A: Yeah.

Q: OK. Now, this book and the entries that are made in it, are these -- is this a document that's maintained in the ordinary course of business by the -- by the St. George's parish?

A: Yes.

Q: And, it's maintained by you or whoever the parish priest was at the time. Is that right?

A: Yes.

Q: And, when the parish --

A: I have -- I have those books from '91, September.

Q: Ninety-one, you've been in charge.

A: Yeah.

Q: OK. And, before that, who was your predecessor?

A: Before that -- let me see -- I took the books from, um -- from Father Gwosden Petrovic.

Q: OK. Father Petrovic.

A: Yes, because, for a short time, they changed many priests, you know?

Q: OK.

A: One priest here was one year, and the other one --

Q: Is this an official record of St. George's Serbian Orthodox Church?

A: Yes.

Transcript Pages 10-11.

Q: When a marriage takes place at St. George's, and it's recorded thereafter, can you tell us what the procedure is?

A: Yeah, we take information from people, you know, on the same day we record marriage in that book.

Q: In which -- in what book?

A: In the book for marriages -- church book for marriages.

Q: OK. Who's in charge of making the entry in the book?

A: The priest who performed marriage.

Q: OK. Now, again, does the book reflect a marriage that occurred on December the 31st, 1988?

A: Yes.

Q: OK. And, was an entry made in that book?

A: Yes.

Transcript page 46

Q: Yeah. Does every en-- does every entry in here list the name of the priest who performed the ceremony?

A: Yeah. Yeah.

Q: And, what is -- what is the name of the priest that performed this December 31, 1998 entry?

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A: The Very Reverend Gwosden Petrovic. This is his name.

Q: Who performed this ceremony.

A: yes.

Q: OK. Thank you. I have no further questions.

ZORAN JOVANOVIC

Transcript page 57

Q: Okay. Okay. So, you believe now, after going through some earlier history, that maybe it was about 1975 that you joined Saint George Parish?

A: Yeah, I was a par--in a -- What you call it? Parish, whatever it was.

Transcript page 63-64

Q: Okay. Now, if you can, tell me, as you were going to a few moments ago, tell me what happened that day.

A: Well, I was there like I always go tohelp around, you know, and they came over there. They ask would I be a witness. I say, "Yeah, why not?"

Q: Who's they?

A: Lida and Mr. Kovac. We went inside the church hall with those candles, you know, and that's what happened.

Q: What happened? Tell me about it.

A: The priest was telling the -- the pray and whatever, you know, inside there, before the wedding. I -- I'm not the priest. I can't

say all the words he was praying, you, know.

Q: Okay. About how long did it last?

A: Whatever the priest -- I don't know, tell you the truth.

Q: Did you remember it well?

A: Excuse me?

Q: Do you remember it very clearly?

A: The we-- the -- The ceremony, you mean?

Q: Um-hum.

A: Yes. But I can't say there was a 45 minutes, and hour. You know what I'm saying. It was for a little while. Yes.

Q: Who was there?

A: Me, Milka Petrovic --

Q: Um-hum.

A: Old man, Wesdon, her - Her husband and some more people. I don't know anymore.

Q: Some people?

A: Yeah, a few more people.

Q: Oh. Do you know any of them?

A: Well, I couldn't remember the names, you know.

Q: You -- But, you -- But, you remember very clearly these people.

A: I think it was her mom, if I remember well.

Q: Okay. Anybody els that you remember?

A: I wouldn't tell you that. I can't recall that.

MILKA PETROVIC

Transcript pages 136-141

Q: This gentleman right here in State's Exhibit 13, do you know him?

A: Yeah.

Q: Who is that?

A: Her - Her husband.

Q: Michael Kovac?

A: Yes.

Q: Okay. Now, you've just said that -- That this gentleman right here is her husband. You know that for a fact, that he's her husband?

A: Yeah.

Q: How do you know? Tell the Judge.

A: Because I -- I was on the ceremony where they get married.

Q: You witnessed it?

A: Yes, I did.

Q: Okay. Is this your name in the book over here on Janu-December 31st, 1988? Is this you --

A: Yes.

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Q: All right. Will you please tell the Judge how it was that you became -- That you came to be a witness to that marriage on that day?

A: Because which I say for very beginning, I do sewing for a living, you know to --

Q: Sewing?

A: (continuing) -- That--Yeah, that's like everything -- I make like a The sew, and I do all the decorate in church for the priest, for the altar boy, everything what they need for the church, I do. And I was there to, you know, make even the flag, you know, for the -- Before the ol--holiday, and I was take the measurements to buy the things and to doing, and they was walk in, and Gvodzm, you know, Petrovic, he called me. He said they need a second witness.

Q: Father Petrovic --

A: Yeah.

Q: (continuing) -- called you over.

A: Yeah. Right. Gvodzm Petrovic.

Q: Okay.

A: And he called me, and I came, you know, and I say, "Okay".

Q: Uh --

A: But I know th--them before they come in the Church, but, I really before that, I don't know there was in the husband, wife or whatever it was. But that they were to ask me they're going to get married, if I want to be a witness. I say, "Okay, why not?"

Q: So what happened?

A: And I was --

Q: Tell - Tell the Court details. What happened next?

A: What happened next?

Q: After you said "Okay."

A: Yeah. I say okay and I just put, you know, some of my things what I have on with me, you know, on the side, and I was standing down behind her, and they give me, like two han-candles to holding, and Father, you know, there was a --Do

-- Do the ceremony.

Q: So, you held two candles.

A: Yeah. Two candles. Right. Yes.

Q: Okay. Did -- who was the male witness?

A: Zoran Jovanovic.

Q: Did he hold two candles, too?

A: Yes. Yes. Yes.

Q: Like this?

A: Yes. That's it. Like this. And we go around the alter three times, and, you know, I was behind her. He was behind, you know, her husband, and we's go three times, you know, the ceremony is over and then after that I took my stuff and finish what I have to do and I went home.

Q: About how long did it take? This whole thing.

A: Well, you know, I never time, but there was, like, less an hours. Usually take like 40 minutes, 45 minutes, depends, you know, the priest.

Q: Okay. So about 40, 45 minutes?

A: Yeah. But I -- I never, you know, time when you look on the time, you know, whether we stand up or the finish, what is it.

Q: Was anybody else there --

A: Those--

Q: (continuing) -- other than -- Other than you, Zoran Jovanovic -

A: And them, too.

Q: The bride and groom, and the priest.

A: Priest.

Q: Anybody else?

A: And there was -- There was few people, you know, behind, that I really don't pay attention.

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Q: Anybody from the State come up to you and ask you any questions?

A: There was the -- the guy, you know, I don't know his name. He asked me this morning. He's over there. That's --

MR. BLACK: I'll stipulate that it's Inspector Dalessio.

Q: Big - Big, husky guy?

A: Yeah.

Q: And he asked you questions?

A: Yeah.

Q: He came up to you?

A: Yeah.

Q: And did you tell him, basically what -- What--

A: Whatever he asked me -- Yeah, what I know what is sure that I tell him.

Q: So, the State knew everything you were going to say here today before I called you?

A: I -- hope so. I don't know.

PETAR PETROVIC

Transcript pages 111-112

Q: If a couple ask you to perform a religious marriage ceremony, and told you that they had already entered into a civil marriage, and then you performed this religious ceremony, if you later learned that, in fact, they had never entered into a civil marriage ceremony as they said they did, what would you do, if anything?

A: Nothing, I tell, Your Honor, I can give you example, for ex-- A month ago I had baptism in church, and godfather, I ask them if he's baptized, if he's not baptized he cannot be a godfather, and they said to me, "Yeah, he's baptized." I finish baptizm, and after that I ask godfather, "In what church you

were baptized?" He said, "I'm not baptized," But this baptism still exists for me, if you look for -- from a religious side, because we are talking about Holy Spirit, you know, to the prayers.